

SELECTMEN'S MEETING MINUTES
July 3, 2013

Members Present: Mark Sullivan, Chairman
Lorraine Brue, Vice Chairman
John Gray, Clerk
Ginny Coppola
James DeVellis

Others Present: Acting Town Manager Bob Cutler
Police Chief Ed O'Leary
Town Counsel Dick Gelerman
Counsel Cindy Amara
Atty. John Davis
Att. Jim Cobrey
Kraft Organization Dan Murphy

The meeting was brought to order at 5:00 p.m. by Mark Sullivan, Chairman. Chairman Sullivan reviewed the agenda. There is only one item on the agenda and it is a discussion on Indemnity Agreement and Insurance.

Town Counsel Dick Gelerman stated that the insurance provision is still not solved and there is a Revolution Soccer Game scheduled for the stadium on Saturday, July 6th. His office was working on this as late as this afternoon. The General Liability issue has been solved but the Civil Rights coverage is still needed. He informed the Board that two motions have been drafted depending upon the outcome of this meeting one or the other will be used.

The MIIA policy as of July 1, 2013 has a deductible amount of \$50,000 per claim for law enforcement liability. This exposes the town and is not acceptable. The previous deductible was \$7,500 per claim. Atty. Davis stated that MIIA will go back to the previous deductible if the stadium gets adequate indemnification coverage. The discussion today is only in regard to the Soccer game on Saturday.

The Kraft organization does have Civil Rights coverage but it is General Liability with no Law Enforcement exclusion. Atty. Davis explained that the MIIA definition is broader than the Krafts' insurers. It doesn't provide as much protection as the MIIA policy in regards to Civil Rights protection.

The deductible will remain at \$50,000 until the Civil Rights provision is solved; this is for stadium events only.

Atty. Cobrey stated that the Kraft organization and Town Counsels have been working to resolve this; the Police Chief and Mr. Cutler worked on the application. He went on to explain that an entity went in May on behalf of the town to try to obtain coverage and

was denied due to the pending Weldner Dutton Case, he did not know who this entity was.

MIIA will restore the deductible to \$7,500 with insurance stating that the town is covered under the Kraft policy for events at the stadium. Atty. Cobrey has been working on language but stated that the Civil Rights shortcoming was a surprise to the Krafts. They have had their own Civil Rights coverage for a long time and were surprised to hear of the gap. They have started the process of addressing this gap and hope to have it done by Friday afternoon.

Atty. Cobrey stated that it would be a great hardship to cancel the scheduled Soccer game especially during this holiday weekend, it would make it difficult to communicate to attendees and would have a damaging effect on future events for both the Krafts and the town.

Mr. Sullivan would like to know how everyone can move forward.

Atty. Cobrey stated that the town's insurance company changed the deductible late in the game and it is a large magnitude change. He feels it could cause a disruption of the relationship with the town and fans. He has been exploring options, but is running out of them.

Atty. Cobrey suggested that the police presence needed at the event be reduced since the Soccer game is not as high profile as other events at the stadium; they value their relationship with the town and want to work on a solution.

Mr. Gray wanted to know if the Civil Rights policy is resolved by Friday, then MIIA would reduce the deductible. Atty. Cobrey stated that MIIA wants them to take out their Civil Rights policy and replace it with a Law Enforcement Civil Rights policy; this is a complicated challenge as their policy covers all the Kraft entities, not just the stadium.

Atty. Davis stated that the Law Enforcement endorsement is being looked at but the Holiday weekend complicates things. MIIA either wants the endorsement or a stand alone policy.

Ms. Brue asked is coverage was received if it would apply to future events. Atty. Cobrey is hopeful that it would.

Ms. Brue asked if other stadiums have issues such as this. Atty. Cobrey stated that he could find no other stadium in this situation.

Atty. Cobrey stated that there are two policies in place, MIIA and the General Liability protection. He feels that there is no way to eliminate the \$50,000 deductible but feels the risks could be reduced through staffing.

Atty. Gelerman suggested that the risk could be reduced by having fewer Foxboro police officers under the Police Chief's control or to ban the sale of alcohol for this event.

Mr. Cutler stated that it is town policy to have police in place at stadium events. The Krafts could set the town's risk at \$50,000 and reimburse the town for any amount above that if there is a claim.

Atty. Cobrey could not agree to that as there is no control over the risk. The Krafts can't control the actions of the Foxboro police so they could not agree to assume the risk. He suggested that some of the Foxboro officers could be put under Kraft Security to reduce the risk or there could be some sort of tiering of the deductible.

Mr. DeVellis wanted to know if the deadline could be extended to Friday or Saturday.

Atty. Davis stated that he spoke with MIIA and the town has credits available that could be applied to any deductible. The credit is in the amount of \$42,500 so the first claim would be for \$7,500. Mr. Cutler stated that this would still come out of the town's budget.

Atty. Gelerman stated that there could be a combination of different factors for a solution such as a provision for no alcohol at the event, deciding how many officers are under whose control, a tiering of the exposure to the deductible. Mr. Sullivan stated that the \$50,000 deductible is too high for the town.

Mr. Gray suggested that the officers be split between the Chief and Stadium Security for the game on Saturday which would move half of the exposure to the Krafts' policy; he likes the idea of no alcohol and would like the attorneys to work on a number for the exposure to any potential claims. He is looking for a cap amount since the amount of plaintiffs is unknown.

Mr. Scollins stated that the revenue from soccer games at the stadium is approximately \$300,000 per year or about \$25,000 per game.

Ms. Brue stated that she is not comfortable with open ended liability. Ms. Coppola is against the \$50,000 deductible.

Ms. Coppola asked if tailgating would still be allowed even if there was to be no alcohol allowed. Mr. Murphy stated that it would.

Atty. Cobrey noted that the current policy is not capped.

Atty. Amata asked if the deadline could be extended to see if a resolution could be reached.

Mr. Gray read Town Counsel's proposed motion:

That the Board having been advised that the applicant has not yet been able to satisfy the insurance requirement condition voted by this Board on or about March 15, 2013 and subsequently confirmed on several occasions, but also being advised that said insurance solution remains a possibility, hereby votes that the Town Manager, in reliance upon such advise as he deems appropriate, may determine on the Board's behalf that the applicant has provided to him, in writing, on or before 5:00 p.m., July 5, 2013 that said applicant has obtained liability insurance, including civil rights coverage, insuring the applicant and the Town for the soccer event scheduled for Saturday, July 6, 2013 in a form satisfactory to this Board.

All parties will be available on the 5th either by phone or in person. This motion authorizes Mr. Cutler to make a decision on the Board's behalf with Atty. Davis, Atty. Gelerman and MIIA approval.

A motion to adopt the motion was made by Mr. Gray and seconded by Ms. Brue.
The motion carried 5-0-0.

Mr. Sullivan asked who will decide which officers go where. Atty. Cobrey stated that they would work with the Police Chief and follow his plan.

Mr. Cutler is concerned with how this would work. A solution would need to be worked out tonight as there is no time to post another meeting before Saturday. He is not sure this action would be allowed under the bylaw.

Mr. DeVellis is concerned with the bylaws also; he is not sure this would be good for the town.

Atty. Cobrey stated that the Chief's plans would not be changed, just the liability.

Chief O'Leary inquired if an Emergency Executive Session could be held to discuss stadium security. Town Counsel advised against it.

The Board took a ten minute recess so that the Chairman, Police Chief and Acting Town Manager could discuss the Chief's concerns. The Board reconvened at 6:30 p.m.

Chief O'Leary stated that he would take care of the operational plan. Ms. Brue asked if the Chief would be in control of all Foxboro police officers. The Chief stated that he would but could not discuss the specifics of the security details in open session.

The Board discussed the deductible. Atty. Gelerman suggested that the town be responsible for the first claim, the Kraft's the second as an indemnification.

Atty. Davis stated that who initiates the action depends on if there is coverage or not. If Team Ops brings a person to Foxboro Police for protective custody, the town will be covered, if a person is placed in custody by Foxboro Police only, there is no coverage.

Ms. Copolla stated that she would be ok with a \$7,500 deductible. Atty. Cobrey stated that the Krafts would not be willing to cover the difference in the deductible. He would prefer the tiered approach, the first loss to the town, the second loss to the Krafts and any amount over that would need to be worked out.

The Board took a ten minute recess and reconvened at 6:57 p.m.

Atty. Gelerman asked if a cap on the deductible would be acceptable if everything else is satisfactory except the limit of deductible. If a conclusion cannot be reached tonight, he could poll the Board by phone to get a number each is comfortable with. The Board members were no agreeable to this.

Mr. Gray read a proposed motion:

That the Board hereby voted that the Town Manager, in reliance upon such advice as he deem appropriate, may determine that an indemnification agreement is in place on or before 5:00 p.m. July 5, 2013 as a satisfactory substitute to the insurance condition previously imposed for said soccer event scheduled for July 6, 2013 provided no alcohol be served in the stadium and the Police Chief maintains his standard authority for law enforcement.

The motion was seconded by Ms. Brue for discussion.

The Board would have to come up with a number tonight or authorize the Town Manager to accept a number by Friday.

The motion was withdrawn.

Jack Authelet then spoke, he is concerned that everyone will loose. The Town has always had strong partnerships with companies such as the straw hat company, the Foxboro Company, Invensys and the Krafts. He feels that the town should not be in this position. He is also concerned with the no alcohol; people will loose paying positions if that is enforced. He is concerned the town will loose its relationship with the stadium.

Margaret Slattery of Joseph Road stated that the bylaw needs to be changed in regards to who pays for security. People, time and circumstances change. The town needs to look at taking the liability off of the town.

Mr. Scollins pointed out the order of conditions in the license. The responsibility of civil rights is to be covered by the entity, has this changed?

Lynda Walsh of 8 Pond Ave. stated that the town needs to trust in Chief O'Leary and his staff.

Atty. Gelerman stated that a cap on the deductible should be worked on and a chance for all parties to come to an agreement, he could poll the Board and Mr. Cutler could make a decision.

A motion to structure the indemnification agreement so that the town is exposed and absorbs \$25,000 and the applicant absorbs any amount above this cost was made by Mr. Gray and seconded by Mr. Sullivan.

The motion was withdrawn.

If liability insurance is not in place by Friday, the event could still go on if the applicant is willing to take responsibility for the deductible amount above \$7,500 and states this in writing by Friday afternoon.

A motion that the Board hereby votes that the Town Manager in reliance upon such advice as he deems appropriate, may determine that an indemnification agreement is in place on or before 5:00 p.m. July 5, 2013 as a satisfactory substitute to the insurance condition previously imposed for said soccer event scheduled for July 5, 2013 and the Police Chief maintains his standard authority for law enforcement and the town's exposure for deductibles under it's policy with MIIA shall not exceed \$7,500 per claimant was made by Mr. Gray and seconded by Ms. Brue. **The motion carried 4-1-0 with Mr. Gray opposed.**

The meeting was adjourned at 8:00 p.m.

Respectfully Submitted,

Diana Gray

John R. Gray, Clerk